

payment of attorney fees and/or costs is not authorized in administrative complaints of age discrimination.

(2) State that a request for such award must be filed within 20 calendar days after receipt.

(3) List the documents that must be sent with the request. (See § 588.54.)

(g) The notice of decision must inform the class agent and his or her representative, if any, of the right to appeal the Army decision to the EEO Office of Revenue and Appeals, of the right to file a civil action, and of the applicable time limits. (For details on appeals and civil actions, see subpart F.)

(h) A final Army decision on a class complaint filed under this regulation is binding on the Army and all members of the class, except those who have properly removed themselves from the class.

§ 588.43 Corrective action.

(a) If discrimination is found, the Army must eliminate or change the personnel policy or practice that gave rise to the complaint, so that the policy or practice will no longer cause such discrimination. Also, the Army must provide individual remedial action to the class agent including an award of attorney fees and/or costs, as appropriate, as provided in subpart E. (The Army must fulfill obligations to consult or negotiate with the unions that have exclusive recognition before doing away with or changing personnel policies or practices.)

(b) If discrimination is found and a class member believes that, but for that discrimination, he or she would have been given employment or an employment benefit, the class member may file a written claim within 30 calendar days with any of the persons listed below. The claim will be filed within 30 calendar days after the notification.

- (1) The activity EEO officer.
- (2) The director of EEOCCRA.
- (3) The director of EEO for the Army.
- (4) The Secretary of the Army.

(c) The claim must include details showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory policy or practice with-

in no more than 135 calendar days before the class complaint was filed.

(d) The Army will try in good faith to resolve the claim within 60 calendar days of receipt. If the Army and the claimant do not agree that the claimant is a member of the class or do not agree on the relief to which the claimant is entitled, the Army will refer the claim, with its recommendations, to the complaints examiner.

(e) The complaints examiner will notify the claimant of the right to a hearing on the claim and will give the parties to the claim an opportunity to submit evidence and representations on the claim. If a hearing is requested, it will be conducted in accord with § 588.25. If a hearing is not requested, the complaints examiner, at his or her discretion, may hold a hearing to obtain the necessary evidence on the claim.

(f) The complaints examiner will issue a report of findings and recommendations on the claim to the Director, EEOCCRA. The Army will issue a final decision within 30 calendar days of receipt of the examiner's report. If a decision is not issued within 30 calendar days, the examiner's findings and recommendations will become the final decision.

(g) If the complaints examiner determines that the claimant is not a member of the class or that the claim was not filed in a timely manner, he or she will recommend rejection of the claim and give notice of this action to the Army, the claimant, and the claimant's representative. The notice will inform the claimant of the right to appeal to the EEOC Office of Review and Appeals or to file a civil action in accord with subpart F.

§ 588.44 The complaint file.

The complaint file will be indexed and tabbed in reverse chronological order and will contain legible copies of the documents listed in § 588.76.

Subpart D—Miscellaneous Complaints

§ 588.45 Reprisal.

A complainant, his or her representative, a witness, or an EEO official may allege restraint, interference, coercion,

discrimination, or reprisal at any stage in the presentation or processing of a complaint of discrimination. An allegation of reprisal may be processed under this regulation, a negotiated grievance procedure where applicable, or the appellate provisions of the MSPB (mixed case).

§ 588.46 Mixed cases.

(a) A mixed case complaint is either—

(1) A complaint of employment discrimination or reprisal filed under this regulation, related to or stemming from an action taken by the Army against the complainant, which action may be appealed to the MSPB pursuant to any law, rule, or regulation.

(2) A complaint of sex-based wage discrimination filed with the EEOC, related to or stemming from an action taken by the Army against a complainant, which may be appealed to the MSPB, pursuant to any law, rule, or regulation.

(b) Examples of action appealable to the MSPB are removals, suspensions for more than 14 days, reductions in grade (demotion), reductions in force, denials of within-grade increases, and furloughs for 30 days or less.

(c) *Mixed case appeals.* (1) A mixed case appeal is an appeal filed with the MSPB which alleges that an Army action resulted, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, mental or physical handicap, age, and/or reprisal, or alleges that such Army action resulted in sex-based wage discrimination.

(2) If an employee files an appeal with the MSPB on a mixed case, before filing a formal complaint of discrimination with the Army, the Army activity must reject or cancel any complaint on the same matter, regardless of whether the allegation of discrimination is raised in the appeal to the MSPB. Upon such rejection or cancellation, the Army activity must advise the employee to raise the allegation of discrimination in connection with his or her appeal to the MSPB. If the employee first files a formal complaint with the Army under this regulation, before filing an appeal on the same matter to MSPB, the Army must

advise the MSPB and request that it dismiss the appeal without prejudice. The Army, thereafter, shall process the complaint in a manner similar to any other complaint, except that there will be no hearing before the EEOC and the complaint's appeal rights will be to the MSPB, not to the EEOC.

(d) *Election.* A mixed case complaint may be presented initially as a discrimination complaint under this regulation or under a negotiated grievance procedure, if applicable, or as part of an appeal to the MSPB as set forth in FPM Supplement 990-1, MSPB regulations, or part 1201, title 5, Code of Federal Regulations (5 CFR part 1201). Employees who wish to appeal must choose the system under which they wish to proceed. Whichever formal action the employee files first is considered an election to proceed in that forum as to the alleged discrimination. The Army will inform every employee who is the subject of an action which is appealable to the MSPB, of the right to file a mixed case complaint with the Army, or to file a mixed case appeal with MSPB if the employee has raised the issue of discrimination during the processing of the personnel action but prior to the decision to effect that personnel action.

(e) *Timely processing.* A mixed case complaint will be processed in a timely manner, so that the final Army decision is issued within 120 calendar days from the date the complaint was filed.

(f) *Processing complaints on proposals.* (1) Any complaint filed in connection with an Army proposal to take an action that is appealable to the MSPB will be consolidated with any subsequent mixed case complaint filed in connection with the Army's decision to take such an action, either as proposed or as modified during the processing of the proposal.

(2) If, following a complaint on a proposal, the complainant files an appeal with the MSPB on the subsequent Army decision resulting from that proposal, the EEO officer will cancel the complaint on the proposal. The complainant will be advised by the EEO officer that any allegations of discrimination contained in that complaint should be raised with the MSPB in connection with the pending appeal.